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IN THE SUPREME COURT OF FLORIDA

CASE NO. 94,340

CLERK, SUPREME COURT
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CURTIS JAMES TILLMAN,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON THE MERITS

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THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF §775.087(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, LAWS OF FLORIDA (1995), VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S 15 YEAR SENTENCES PURSUANT TO THE GORT ACT REVERSED FOR RESENTENCING.

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INTRODUCTION

This is the initial brief on the merits of petitioner/defendant Curtis James Tillman on conflict jurisdiction from the Third District Court of Appeal.

Citations to the record are abbreviated as follows:

(R.) - Clerk's Record on Appeal

(TR.) - Transcript of Proceedings

(S.R.) - Supplemental Record on Appeal

(A.) - Appendix with Third District's decision

STATEMENT OF THE CASE AND FACTS

The petitioner/defendant was charged with three counts of aggravated assault with a deadly weapon and one count of grand theft. (R. 1-4). Specifically, Mr. Tillman was accused of attempting to steal t-shirts from a printing company and when confronted by the employees, waving a pocket knife at the employees in an effort to escape. (TR. 110-12, 124-26, 153-54, 193-94, 122, 126, 129). This offense was committed on October 22, 1996. (R. 1).

The jury found the Defendant guilty of one count of simple assault, two counts of aggravated assault with a deadly weapon and petit theft. (T. 298). Mr. Tillman was sentenced on October 17, 1997 as a violent career criminal, pursuant to section 775.084(1)(c), Florida Statutes (1995), the "Officer Evelyn Gort

and All Fallen Officers Career Criminal Act of 1995 to two concurrent state prison terms of fifteen years with ten year minimum mandatories, concurrent with two terms of 60 days on the misdemeanors. (R. 40-44; S.R. 10). See §775.084(4)(c), Fla. Stat. (1995).

The defendant appealed his conviction and sentence and on October 14, 1998, the Third District Court of Appeal affirmed his conviction but certified direct conflict with the Second District Court of Appeal on the violent career criminal sentencing issue. (A. 1-2).

SUMMARY OF ARGUMENT

The Gort Act violent career criminal provisions of §775.084(4)(c), Fla. Stat. (1995), are unconstitutional because the session law that created it, chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution. The Gort Act addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence. Since these two subjects are not reasonably related, chapter 95-182, Laws of Florida, addresses more than one subject and is therefore invalid.

Consequently, defendants whose offenses were committed between the date the Gort Act took effect on October 1, 1995, and May 24, 1997, when the legislature reenacted the Gort Act, are entitled to relief from such violent career criminal sentencing. Since the defendant in the present case committed the crime on October 22, 1996, during this window period, he falls within this window period and should be resentenced within the guidelines. The decision of the Third District must be quashed, the defendant's sentence must be reversed, and this case remanded to the trial court for resentencing.

This precise issue is presently pending in this Court in *State v. Thompson*, Case No: 92,831, and the defendant fully adopts the defense brief filed in this Court in *Thompson* for the initial brief in this case.

ARGUMENT

THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF §775.087(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, LAWS OF FLORIDA (1995), VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S 15 YEAR SENTENCES PURSUANT TO THE GORT ACT REVERSED FOR RESENTENCING.

The issue before this Court is whether the Gort Act, creating the violent career criminal sentencing enhancement in §775.084(4)(c), Florida Statutes (1995), is unconstitutional on the ground that the session law that enacted it, chapter 95-182, at 1665, Laws of Florida, violated the single subject provision of the state constitution, so that the defendant's sentence as a violent career criminal pursuant to that act is illegal.

This precise issue is presently pending before this Court in *State v. Thompson*, Case No: 92,831. In *Thompson v. State*, 708 So.2d 315 (Fla. 2d DCA 1998), the Second District Court of Appeal held that chapter 95-182 was unconstitutional for violation of the single subject requirement of article III, section 6, of the Florida Constitution, and invalidated a violent career criminal sentence under the Gort Act on that basis. The effect of that ruling is to invalidate a violent career criminal disposition for crimes committed between the time the Gort Act was enacted on October 1, 1995, to the legislative reenactment of the Gort Act on

May 24, 1997. As noted, the *Thompson* case is now pending before this Court on this issue.

In the present case, the defendant committed the offenses of aggravated assault on October 22, 1996, within the window period during which the Gort Act was found unconstitutional in *Thompson*. The defendant was found to be a violent career criminal and was sentenced pursuant to the Gort Act to enhanced sentences of 15 years in prison with 10 year mandatory minimums before release. (R. 42).

In *Linder v. State*, 711 So. 2d 1340 (Fla. 3d DCA 1998), the Third District acknowledged that a defendant would be entitled to sentencing relief on this issue if his case were proceeding in the Second District. The Third District also acknowledged in *Linder* that it had previously rejected this identical single subject challenge to chapter 95-182 in *Higgs v. State*, 695 So.2d 872 (Fla. 3d DCA 1997). However, in view of the Second District's later contrary decision in *Thompson*, the Third District certified conflict to this Court both in *Linder* and in the present case on the issue of whether the violent career criminal sentencing statute, §775.084(4)(c), Florida Statutes (1995), is unconstitutional in that it violates the single subject provision of the state constitution.

The defendant has reviewed the arguments made by the defense in the *Thompson* case and has determined they are fully applicable

to this case. In the interest of judicial economy, the defendant therefore fully adopts the arguments made in the defense answer brief filed in this Court in *State v. Thompson* for the petitioner's brief in this case.

In conclusion, chapter 95-182, Laws of Florida, creating the Gort Act violates the single subject provision of the Florida Constitution. Since the crime the defendant committed in this case occurred during the window period during which the Gort Act was unconstitutional, the defendant's sentencing as a violent career criminal under the Gort Act was illegal and his enhanced violent career criminal sentence of 15 years in prison must be reversed.

CONCLUSION

Based upon the foregoing, the defendant requests that this Court quash the decision of the Third District and reverse his violent career criminal sentence with directions to remand the case to the lower court for a new sentencing.

Respectfully submitted,

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By: *Lisa Walsh*
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to the Office of the Attorney General, Criminal Division, 444 Brickell Ave., #950, Miami, Florida 33131, this 23rd of November, 1998.

By: *Lisa Walsh*
LISA WALSH
Assistant Public Defender

A P P E N D I X

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, 1998

CURTIS JAMES TILLMAN,

**

Appellant,

**

vs.

**

CASE NO. 97-3270

THE STATE OF FLORIDA,

**

LOWER

Appellee.

**

TRIBUNAL NO. 96-33901

Opinion filed October 14, 1998.

An Appeal from the Circuit Court of Dade County, Lauren Levy
Miller, Judge.

Bennett H. Brummer, Public Defender, and Lisa Walsh, Assistant
Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Lara J.
Edelstein, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and NESBITT, and GODERICH, JJ.

PER CURIAM.

We affirm the defendant's convictions finding no reversible
error. Additionally, we affirm the defendant's sentences as a
violent career criminal, Higgs v. State, 695 So. 2d 872 (Fla. 3d

DCA 1997), and again certify conflict with the Second District's opinion in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA), review granted, No. 92,831 (Fla. May 26, 1998).

Affirmed; conflict certified.